

(ii) none of the assets, properties or rights of the Company and its Subsidiaries include any lease made pursuant to former Section 168(f)(8) of the Internal Revenue Code of 1954; and (iii) there is no Lien other than a Permitted Lien affecting any of the assets, properties or rights of the Company and its Subsidiaries that arose in connection with any failure or alleged failure to pay any Tax;

(k) neither the Company nor any of its Subsidiaries or any predecessor thereof has been a member of an affiliated group (within the meaning of Code § 1504(a)) filing a consolidated federal income Tax Return (other than a group the common parent of which is Leucadia);

(l) the Company and its Subsidiaries have neither (i) made, changed or revoked, or permitted to be made, changed or revoked, any material election or method of accounting with respect to Taxes affecting or relating to the Company and its Subsidiaries since the filing of the applicable Tax Return relating to Tax periods ending on or before December 31, 2003, nor (ii) entered into, or permitted to be entered into, any closing or other agreement or settlement with respect to Taxes affecting or relating to the Company and its Subsidiaries;

(m) the Company and each of its Subsidiaries is and has always been classified as an entity disregarded as separate from its owner (within the meaning of Treasury Regulations § 301.7701-2(c)(2)) for U.S. federal Tax purposes and will continue to be so classified up to and including the Closing Date; and

(n) neither the Company nor any of its Subsidiaries have a permanent establishment in a jurisdiction outside the United States.

This Section 5.10 represents the sole and exclusive representations and warranties of the Seller regarding Tax matters.

SECTION 5.11. Absence of Undisclosed Liabilities. Except as set forth in Schedule 5.11, neither of the Company nor any of the Retained Subsidiaries has any material indebtedness or liability, absolute or contingent, known or unknown, which is not shown or provided for on the July 31 Balance Sheet other than liabilities as shall have been incurred or accrued in the ordinary course of business since July 31, 2005. Except as shown in the July 31 Balance Sheet or in Schedule 5.11, neither of the Company nor any of the Retained Subsidiaries is directly or indirectly liable upon or with respect to (by discount, repurchase agreements or otherwise), or obliged in any other way to provide funds in respect of, or to make guarantees or assume, any debt, obligation or dividend of any Person other than the Company or any Retained Subsidiaries, except endorsements in the ordinary course of business in connection with the deposit, in banks or other financial institutions, of items for collection.

SECTION 5.12. Company Real Property.

(a) Schedule 5.12(a) contains a true and complete list of all real property owned in fee simple by the Company or the Retained Subsidiaries (the "Owned Real Property"). The Seller has made available to the Buyer copies of any title insurance policies (together with copies of any documents of record listed as exceptions to title on such policies) currently insuring each Owned Real Property and copies of the most recent surveys of the same to the

extent the Seller, the Company or its Subsidiaries has such documents. The Company or the Retained Subsidiaries have good and valid title to all of the Owned Real Property free and clear of all Liens other than Permitted Liens.

(b) Schedule 5.12(b) sets forth a list of all leases, licenses, subleases and occupancy agreements, together with all amendments thereto, with respect to all properties which are material to the operation of the Businesses (other than with respect to any IRUs, cross-connection, interconnection, co-location or entrance facility arrangements) in which either of the Company or the Retained Subsidiaries has a leasehold interest, license or similar occupancy rights (each, a "Lease" and collectively, the "Leases"; the property covered by Leases under which either of the Company or the Retained Subsidiaries is a lessee is referred to herein as the "Leased Real Property"; the Leased Real Property, together with the Owned Real Property, collectively being the "Company Real Property"). Neither the Company nor any of the Retained Subsidiaries is a party to any Contract (other than a Lease) with the lessor of any of the Leased Real Properties, which gives such lessor any right to terminate or adversely alter the terms of the Lease to which such lessor is a party. Except as set forth in Schedule 5.11 and Schedule 5.17, the Company or the Retained Subsidiaries enjoys peaceful and undisturbed possession of the Leased Real Property pursuant to the Leases in all material respects except for Leases expiring in accordance with their terms after the date hereof and prior to the Closing Date. No option has been exercised under any of such Leases, except options whose exercise has been evidenced by a written document, a true and complete copy of which has been delivered or made available to the Buyer with the corresponding Lease.

(c) Except as set forth on Schedule 5.12(c), since July 31, 2005, no Lease has been modified or amended in writing in any way materially adverse to the operation of the Businesses and no party to any Lease has given either of the Company or the Retained Subsidiaries written notice of or, to the Seller's Knowledge, made a claim with respect to any breach or default.

(d) Except as set forth in Schedule 5.12(d) and other than with respect to IRUs, co-location, cross-connection, interconnection, entrance facilities or other rights incidental to the provision of services established in the ordinary course of business, none of the Company Real Property is subject to any option, lease, sublease, license or other agreement granting to any Person or entity any right to the use, occupancy or enjoyment of such property or any portion thereof or to obtain title to all or any portion of such property.

(e) Except as set forth on Schedule 5.12(e), all material improvements, systems and fixtures on the Company Real Property are in good operating condition and repair, and generally are adequate and suitable in all material respects for the present and continued use, operation and maintenance thereof as now used, operated or maintained. All improvements on the Company Real Property constructed by or on behalf of the Company or any Retained Subsidiary, to the Seller's Knowledge, were constructed in compliance in all material respects with applicable laws, ordinances and regulations affecting such Company Real Property, except for possible nonconforming uses or violations that do not and will not interfere with the present use, operation or maintenance thereof by either of the Company or the Retained Subsidiaries as now used, operated or maintained or access thereto, and neither of the Company or the Retained

Subsidiaries has received any written notice, or to the Seller's Knowledge, any verbal notice, to the contrary.

SECTION 5.13. Assets of the Company and its Subsidiaries.

(a) The Company and the Retained Subsidiaries own, license under valid and enforceable licenses or lease under valid and enforceable leases and will own, license or lease after the Closing all of the assets, properties and rights material to the operation of the Businesses as currently conducted. Except as set forth on Schedule 5.13(a), neither the Company nor the Retained Subsidiaries have any material assets, properties, rights or interests of any kind or nature that either they are presently or have been since July 31, 2005, using, holding or operating in the Businesses prior to the Closing that will not continue to be used, held or owned by them immediately following the Closing.

(b) Except as set forth on Schedule 5.13(a), the Transferred Subsidiaries do not own any assets or properties which are material to the operation of the Businesses as currently conducted, and such Transferred Subsidiaries do not have any rights with respect thereto.

(c) The assets and rights of the Transferred Subsidiaries consist exclusively of (i) the ownership of the Company's Tulsa, Oklahoma headquarters, including all owned or leased furniture, equipment and fixtures located therein set forth on Annex A to Schedule 7.4 and (ii) rights under the Aircraft Leases.

(d) Each of the Company and the Retained Subsidiaries has good and valid fee simple title, free and clear of any Liens, to, or a valid leasehold interest under enforceable leases in, all of its assets, properties and rights, other than pursuant to (i) the Company's Credit Documents, (ii) the Company's Real Estate Debt Documents and (iii) Permitted Liens. The Discharged Real Estate Debt Documents have been discharged in full, all Liens under the Discharged Real Estate Debt Documents have been released and all obligations of the Company and the Retained Subsidiaries under the Discharged Real Estate Debt Documents or related to the debt evidenced or secured by same have been satisfied.

SECTION 5.14. Intellectual Property.

(a) Except as listed in Schedule 5.14(a): (i) each of the Company and the Retained Subsidiaries owns or has a valid and enforceable license to use, (and as applied to Software owned by the Company or the Retained Subsidiaries, to reproduce, modify, distribute and sublicense copies of) all Intellectual Property and Technology used in and material to the operation of the Businesses as presently conducted; (ii) the Intellectual Property and Technology owned by or licensed to each of the Company and the Retained Subsidiaries includes all of the Intellectual Property and Technology material to the operation of the Businesses as presently conducted; (iii) each of the Company and the Retained Subsidiaries is in compliance with all material contractual obligations relating to the protection of Intellectual Property and Technology licensed to them; (iv) to the Seller's Knowledge, no third party is infringing any Intellectual Property of the Company or any of its Retained Subsidiaries in any material respect; (v) no claims are pending or, to the Seller's Knowledge, threatened that the Company or any of

its Retained Subsidiaries has infringed or misappropriated Intellectual Property of a third party, and to the Seller's Knowledge the conduct of the Businesses does not infringe or misappropriate any Intellectual Property of a third party in any material respect; and (vi) no claims are pending or, to the Seller's Knowledge, threatened challenging the ownership, validity or enforceability of the Intellectual Property owned by the Company or any of its Retained Subsidiaries or the possession or use of the Technology owned by the Company or any of its Retained Subsidiaries.

(b) Schedule 5.14(b) sets forth a complete and current list of patents and applications therefor, copyright registrations and applications therefor, registered trademarks, registered service marks and applications therefor and domain names owned by, filed in the name of, or applied for, by the Company anywhere in the world (the "Listed Intellectual Property"), including the owner of record, date of application or issuance and relevant jurisdiction as to each. Except as listed in Schedule 5.14(b), all Listed Intellectual Property is owned by the Company and/or the Retained Subsidiaries, free and clear of all Liens. Except as listed in Schedule 5.14(b), there are no actions that must be taken or payments that must be made by the Company or the Retained Subsidiaries within ninety (90) days of the Closing that, if not taken or paid, will adversely affect the Listed Intellectual Property or the right of the Buyer to use the same as and where used as of the effective date hereof. To the Seller's Knowledge, all Listed Intellectual Property is valid, subsisting, unexpired, in proper form and enforceable. Except as listed in Schedule 5.14(b), no Listed Intellectual Property is the subject of any proceeding before any governmental, registration or other authority in any jurisdiction, other than any office action or other form of preliminary or final refusal of registration. The consummation of the transactions contemplated by this Agreement will not alter or impair any Listed Intellectual Property owned by the Company or the Retained Subsidiaries.

(c) Except with respect to licenses by which the Company or the Retained Subsidiaries authorize customers to use Software owned by the Company or the Retained Subsidiaries and licenses for Software integrated with or embedded in products sold by them in the ordinary course of business, Schedule 5.14(c) sets forth a complete list of agreements by which Intellectual Property and Technology owned by the Company or the Retained Subsidiaries have been licensed to a third party. Except with respect to (i) licenses by which the Company or the Retained Subsidiaries are authorized to use or sublicense to their customers Software owned by third parties and integrated with or embedded in products purchased by the Company or the Retained Subsidiaries for use or resale in the ordinary course of business and (ii) licenses of generally available Software with an annual maintenance fee of no more than \$25,000, Schedule 5.14(c) further sets forth a complete list of agreements by which the Company and the Retained Subsidiaries are authorized to use Intellectual Property and Technology owned by third parties that are material to the conduct of the Businesses as presently conducted ("Listed License Agreements"). Except as set forth in Schedule 5.14(c), the Company and the Retained Subsidiaries are in material compliance with all the Listed License Agreements and neither the Company nor the Retained Subsidiaries will be, as a result of the execution and delivery of this Agreement or the performance of its obligations under this Agreement, in breach of any Listed License Agreement. Neither Company nor the Retained Subsidiaries has received written notice of a material default of any Listed License Agreement which remains uncured as of the Closing.

(d) Except as set forth in Schedule 5.14(d), neither the Company nor the Retained Subsidiaries has made any claim of a violation, infringement, misuse or

misappropriation by any third party (including any employee or former employee of the Company or the Retained Subsidiaries) of any Intellectual Property owned by the Company or the Retained Subsidiaries, which claim is pending. Except as set forth in Schedule 5.14(d), neither the Company nor the Retained Subsidiaries have entered into any agreement to indemnify any other Person against any charge of infringement of any Intellectual Property, other than indemnification provisions contained in employment policies and agreements, customer agreements, agreements for the purchase of capacity, equipment procurement agreements, software license agreements and maintenance agreements related to the foregoing arising in the ordinary course of business.

(e) The Company and Retained Subsidiaries have taken reasonable steps, including, without limitation, the execution of appropriate confidentiality agreements, to protect and preserve the confidentiality of all the Company's and Retained Subsidiaries' trade secrets, including customer data, owned and licensed Software, owned and licensed databases and customer lists, and all disclosures of such information to, and use by, any third party (other than (i) to competent regulators, accountants and counsel, in each instance acting in their professional capacities, or (ii) pursuant to an applicable court order) have been pursuant to the terms of written confidentiality undertakings between such third party and the Company or Retained Subsidiaries.

(f) To the Knowledge of the Seller and except in connection with occasional sales of excess equipment or inventory, neither the Company nor the Retained Subsidiaries have purchased or sold any material telecommunications equipment without procuring or having the transferee procure a software license for the imbedded software in such equipment.

(g) This Section 5.14 shall constitute the sole and exclusive representations and warranties regarding Intellectual Property of the Seller other than as set forth in Sections 5.13(a) and (b) hereof.

SECTION 5.15. Licenses and Permits. Exclusive of any zoning or construction permits, contractor licenses or local government licenses and permits to do business, variances, orders, exceptions or similar licenses issued by Governmental Entities, which the parties hereto agree are not material either individually or in the aggregate, Schedule 5.15 sets forth a true and complete list of all material licenses, permits, franchises, registrations, authorizations and approvals issued or granted to any of the Company or the Retained Subsidiaries by any Governmental Entity (the "Licenses and Permits," which such term shall not include the Listed License Agreements), applicable to the Company and the Retained Subsidiaries, any of their respective properties or other assets or the Businesses. The Company and the Retained Subsidiaries are (and since January 1, 2004 have been) in compliance in all material respects with the Licenses and Permits. The Company and the Retained Subsidiaries hold all Licenses and Permits necessary for the lawful conduct of their respective businesses and for them to operate the Businesses as currently conducted. Except as set forth on Schedule 5.15, the Company and the Retained Subsidiaries are (and since January 1, 2004 have been) in compliance in all material respects with the terms of all Licenses and Permits and no administrative or judicial proceeding is pending or, to the Seller's Knowledge, overtly threatened to amend, terminate, revoke, limit, suspend or cancel any such License or Permit. Since January 1, 2004, except as set forth on Schedule 5.15, neither the Company nor any of the Retained Subsidiaries

has received written notice to the effect that (a) any Governmental Entity claimed or alleged that the Company or any Retained Subsidiary was not in compliance with all Licenses and Permits applicable to the Company or the Retained Subsidiaries, any of their properties or other assets or the Businesses or (b) any Governmental Entity was considering the amendment, termination, suspension, revocation or cancellation of any License or Permit. Copies of the Licenses and Permits and all pending applications therefor have been made available to the Buyer.

SECTION 5.16. Compliance with Law. Except as set forth in Schedule 5.16, the operations of the business of the Company and the Retained Subsidiaries have been conducted in accordance in all material respects with all applicable laws, regulations and orders of all courts and other Governmental Entity having jurisdiction over such entity and its assets, properties and operations. Except as set forth in Schedule 5.16, since January 1, 2004, none of the Company or the Retained Subsidiaries has received notice of any violation (or any investigation with respect thereto) of any such law, regulation or order, and none of the Company or the Retained Subsidiaries is in default with respect to any material order, writ, judgment, award, injunction or decree of any national, state or local court or governmental or regulatory authority or arbitrator, domestic or foreign, applicable to any of its assets, properties or operations.

SECTION 5.17. Litigation. Except as set forth in Schedule 5.17, there are no material claims, actions, suits, proceedings, subpoenas or, to the Seller's Knowledge, investigations (each, an "Action") pending or, to the Seller's Knowledge, overtly threatened, before any Governmental Entity, or before any arbitrator of any nature, brought by or against any of the Company or its Subsidiaries or involving, affecting or relating to their respective assets, properties or rights or the transactions contemplated by this Agreement. There is no material judgment, decree, injunction, rule or order of any Governmental Entity, or before any arbitrator of any nature outstanding, or to the Seller's Knowledge, overtly threatened to be imposed, against either of the Company or the Retained Subsidiaries.

SECTION 5.18. Contracts.

(a) Schedule 5.18(a) sets forth a complete and correct list of all Contracts.

(b) Each Contract is valid, binding and enforceable against the Company or the Retained Subsidiaries party thereto and, to the Seller's Knowledge, against the other parties thereto in accordance with its terms, and is in full force and effect, subject to (i) the effect of bankruptcy, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of creditors' rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law) and (iii) an implied covenant of good faith and fair dealing. Each of the Company and the Retained Subsidiaries has performed all obligations required to be performed by it to date under, and is not in default or delinquent in performance, status or any other respect (claimed or actual) in connection with, any Contract, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default and, to the Seller's Knowledge, no other party to any Contract is in default in respect thereof, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default, in each case, except for those defaults or delinquencies that would not, individually or in the aggregate, reasonably be expected to materially adversely affect the ability of the Company and the Retained Subsidiaries to conduct the Businesses as currently conducted.

The Seller has delivered to the Buyer or its representatives true and complete copies of all the Contracts.

(c) A "Contract" means any agreement, contract or commitment, oral or written, to which either of the Company or any Retained Subsidiary is a party or by which it or any of its assets are bound (other than the Listed License Agreements) constituting:

(i) (A) one of the 50 largest (by revenue generated for the Company and the Retained Subsidiaries in 2005 through July 31st) Telecommunications Business contracts or agreements for the sale, license (as licensor) or lease (as lessor) by the Company or any of the Retained Subsidiaries of services, products, Intellectual Property or other assets to any third party; (B) one of the 20 largest (by revenue generated for the Company and the Retained Subsidiaries in 2005 through August 31st) Vyvx Business contracts or agreements for the sale, license (as licensor) or lease (as lessor) by the Company or any of the Retained Subsidiaries of services, products, Intellectual Property or other assets to any third party; or (C) a contract or agreement relating to the sale, license or lease by the Company or any of the Retained Subsidiaries of any indefeasible rights of use of capacity or infrastructure ("IRUs");

(ii) (A) a Telecommunications Business contract, agreement or purchase under a tariff for the purchase, license (as licensee) or lease (as lessee) by the Company or any of the Retained Subsidiaries of services, materials, products, personal property, supplies, Intellectual Property or other assets from any supplier or vendor or for the furnishing of services to the Company or any of the Retained Subsidiaries involving total payments in excess of \$250,000 from January 1, 2005 through July 31, 2005 or (B) a Vyvx Business contract, agreement or purchase under a tariff for the purchase, license (as licensee) or lease (as lessee) by the Company or any of the Retained Subsidiaries of services, materials, products, personal property, supplies, Intellectual Property or other assets from any supplier or vendor or for the furnishing of services to the Company or any of the Retained Subsidiaries involving total payments in excess of \$300,000 from January 1, 2005 through July 31, 2005 (the foregoing in clauses (A) and (B) are collectively, the "Vendor Contracts");

(iii) a peering agreement of the Company or a Retained Subsidiary used by the Company or its Retained Subsidiaries since January 1, 2005;

(iv) a mortgage, indenture, security agreement, guaranty or other agreement or instrument relating to the borrowing of money or extension of credit (other than accounts receivable and accounts payable in the ordinary course of business);

(v) an employment, employment change of control, retention, severance or material consulting agreement with individuals (other than a sales commission plan entered into in the ordinary course of business or any Employee Benefit Plans set forth on Schedule 5.19(a));

(vi) a joint venture, partnership or limited liability company agreement with third parties;

(vii) a non-competition agreement or any other agreement or obligation which purports to limit in any material respect (i) the manner in which, or the localities in which, the Businesses may be conducted or (ii) the ability of either of the Company or the Retained Subsidiaries to provide any type of service;

(viii) a Lease set forth on Schedule 5.12(b) hereto;

(ix) an agreement requiring capital expenditures by the Company or its Retained Subsidiaries in excess of \$500,000 following the Measurement Date (exclusive of the items set forth on Schedule 7.1(b)(vi) hereto); or

(x) any other material agreement not in the ordinary course of business of the Company and its Subsidiaries.

(d) [Intentionally Omitted]

(e) [Intentionally Omitted]

(f) Except as set forth on Schedule 5.18(f), none of the contracts or agreements for the sale, license (as licensor) or lease (as lessor) by the Company or any of its Subsidiaries of services, products, Intellectual Property rights or other assets to any third party contain any exclusivity clause, most-favored-nations clause, benchmarking clause or marked-to-market pricing provision. Each of the Company and its Subsidiaries (as applicable) is not in material default in any respect (claimed or actual) in connection with any exclusivity clause, most favored nations clause, benchmarking clause or marked-to-market pricing provision contained in any contract listed on Schedule 5.18(f), and no event has occurred which, with due notice or lapse of time or both, would constitute such a default.

(g) All of the peering agreements of the Company and its Retained Subsidiaries that will be in effect as of the Closing are terminable by the Company or the Retained Subsidiaries on 90 days' prior notice without liability or obligation to the Company or the Retained Subsidiaries.

(h) Schedule 5.18(h) sets forth the estimated aggregate maximum liability of the Company and the Retained Subsidiaries as of January 1, 2006, (i) to SBC and its Affiliates in the event of the termination of agreements and tariffs with SBC and its Affiliates relating to leased Shared Network Circuits and (ii) to all other leased Shared Network Circuit vendors in the event of the termination of agreements and tariffs with such vendors relating to the leased Shared Network Circuits.

(i) Schedule 5.18(i) sets forth a list of all leased entrance facility and DS-3 muxed circuits of the Company and the Retained Subsidiaries other than those that are terminable by the Company or the Retained Subsidiaries on less than 60 days' prior notice without liability to the Company or the Retained Subsidiaries (collectively, the "Shared Network Circuits") that is correct in all material respects as of September 30, 2005 and is the basis for the estimate provided pursuant to Section 5.18(h), together with the vendor name, speed, monthly recurring charge, and termination date for each circuit.

SECTION 5.19. Employee Plans.

(a) Schedule 5.19(a) sets forth all “employee benefit plans,” as defined in Section 3(3) of ERISA, and all other plans, policies and agreements providing severance pay, sick leave, vacation pay, salary continuation, retirement benefits, deferred compensation, bonus pay, incentive pay, stock options, hospitalization insurance, medical insurance, life insurance, cafeteria benefits, dependent care reimbursements, prepaid legal benefits, scholarships or tuition reimbursements, maintained by the Company or any of the Retained Subsidiaries or to which the Company or any of the Retained Subsidiaries is obligated to contribute thereunder for current or former employees the Company and the Retained Subsidiaries (excluding the Transferred Benefit Plans, the “Employee Benefit Plans”).

(b) True, correct and complete copies of the following documents, with respect to each of the Employee Benefit Plans, have been delivered to the Buyer, to the extent applicable: (i) all plans and related trust documents, and amendments thereto; (ii) Forms 5500 filed for the three most recent plan years; (iii) the most recent IRS determination letter; and (iv) the most recent summary plan descriptions, annual reports and material modifications.

(c) None of the Employee Benefit Plans is a multiemployer plan, as defined in Section 3(37) of ERISA (“Multiemployer Plan”). Neither the Company nor any ERISA Affiliate has withdrawn in a complete or partial withdrawal, within the meaning of Section 4201 of ERISA, from any Multiemployer Plan, nor has any of them incurred any liability due to the termination or reorganization of a Multiemployer Plan which has not been satisfied in full.

(d) Each Employee Benefit Plan that is intended to qualify under Section 401 of the Code and the trust maintained pursuant thereto is exempt from federal income taxation under Section 501 of the Code, and nothing has occurred with respect to the operation of any such Employee Benefit Plan that would reasonably be expected to cause the loss of such qualification or exemption or the imposition of any material liability, penalty or tax under ERISA or the Code.

(e) All contributions (including all employer contributions and employee salary reduction contributions) and all premiums required to have been paid under any of the Employee Benefit Plans or by law (without regard to any waivers granted under Section 412 of the Code) to any funds or trusts established thereunder or in connection therewith have been made by the due date thereof (including any valid extension). No accumulated funding deficiencies exist in any of the Employee Benefit Plans subject to Section 412 of the Code.

(f) Neither the Company nor any ERISA Affiliate has terminated any Employee Benefit Plan subject to Title IV, or incurred any outstanding liability under Section 4062 of ERISA, to the PBGC or to a trustee appointed under Section 4042 of ERISA. Neither the Company nor any ERISA Affiliate has engaged in any transaction described in Section 4069 of ERISA.

(g) Except as set forth on Schedule 5.19(g) hereto, there are no pending material actions, claims or lawsuits which have been asserted or instituted against the Employee Benefit Plans, the assets of any of the trusts under such plans or the plan sponsor or the plan

administrator, or against any fiduciary of the Employee Benefit Plans with respect to the operation or administration of such plans or the investment of plan assets (other than routine benefit claims), nor does the Seller have Knowledge of facts which could form the basis for any such claim or lawsuit. Except as set forth on Schedule 5.19(g) hereto, no Employee Benefit Plan has been the subject of an audit, investigation or examination by any Governmental Entity within the three preceding years.

(h) Except as set forth on Schedule 5.19(h), the Employee Benefit Plans have been maintained, in all material respects, in accordance with their terms and with all provisions of ERISA, the Code and other applicable federal and state laws. None of the Company, the Retained Subsidiaries, or, to the Seller's Knowledge, any "party in interest" or "disqualified person" with respect to the Employee Benefit Plans has engaged in a "prohibited transaction" within the meaning of Section 406 of ERISA or 4975 of the Code. Except as set forth on Schedule 5.19(h), no stock or other security issued by the Company or any Affiliate forms or has formed a part of the assets of any Employee Benefit Plan.

(i) Except as set forth on Schedule 5.19(i) hereto, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will, either alone or as a prerequisite to the occurrence of any subsequent event: (i) result in any payment becoming due to any employee (current, former or retired) of the Company or the Retained Subsidiaries; (ii) increase any benefits otherwise payable under any Employee Benefit Plan; (iii) result in the acceleration of the time of payment or vesting of any benefits under any Employee Benefit Plan; or (iv) constitute a "change in control" or similar event under any Employee Benefit Plan.

(j) Schedule 5.19(j) sets forth the names of the persons eligible to participate in the OPEB Plans, their ages and years of service credited under the OPEB Plans on the date hereof, date of retirement (if applicable), and whether they are union employees.

SECTION 5.20. Insurance. Schedule 5.20 lists the material surety bonds, fidelity bonds as well as the insurance companies, policy numbers, aggregate coverage amount and type, and deductibles of all material policies of title, liability, fire, casualty, business interruption, workers' compensation and other forms of insurance insuring each of the Company and the Retained Subsidiaries and their assets, properties and operations. The Seller has made available to the Buyer a true and complete copy of all such bonds and policies. Except as set forth in Schedule 5.20, all such policies and bonds are in full force and effect and none of the Company or the Retained Subsidiaries is in material default under any provisions of any such bond or policy of insurance nor has any of the Company or the Retained Subsidiaries received notice of cancellation of or cancelled any such insurance without replacement thereof. For all claims made under such bonds or policies, the Company and its Subsidiaries have timely complied with any applicable notice provisions, except where the failure to so comply would not materially adversely affect the operation of the Businesses as currently conducted.

SECTION 5.21. Transactions with Directors, Officers, Managers, and Affiliates. Except as set forth in Schedule 5.21 and with respect to any Excluded Liabilities or Excluded Assets, none of the Company or the Retained Subsidiaries is a party to any agreement or arrangement (other than employment agreements or arrangements) with any of the directors,

officers, managers, members, partners or stockholders of the Company or the Retained Subsidiaries or to the Seller's knowledge, any Affiliate (other than the Company or any Retained Subsidiary) or immediate family member of any of the foregoing under which it: (i) leases any real or personal property (either to or from such Person); (ii) licenses technology (either to or from such Person); (iii) is obligated to purchase any tangible or intangible asset from or sell such asset to such Person; (iv) purchases products or services from such Person; (v) pays or receives commissions, rebates or other payments; or (vi) provides or receives any other material benefit. Except as set forth on Schedule 5.21, to the Seller's Knowledge, during the period from and including November 6, 2003 to and including September 30, 2005, none of the directors, officers, managers, members or stockholders of the Company or the Retained Subsidiaries, or any immediate family member of any of such Persons, has been a director, officer, manager or member of, or has had any direct or indirect interest in (other than beneficial ownership of less than 5% of the outstanding capital stock of any publicly traded company or any passive investment) any customer identified on Schedule 5.22(b). No Affiliate of the Company and the Retained Subsidiaries (other than the Company and the Retained Subsidiaries) owns or has any rights in or to any of the assets, properties or rights used by either of the Company or the Retained Subsidiaries in the ordinary course of its businesses except as set forth on Schedule 5.21.

SECTION 5.22. Suppliers and Customers.

(a) Schedule 5.22(a) sets forth a list of the top 25 suppliers of the Telecommunications Business and the top 20 suppliers of the Vyvx Business by dollar amount paid by the Company and the Retained Subsidiaries (taken together) during the seven-month period ended July 31, 2005 (with respect to the Telecommunications Business) and the seven-month period ended July 31, 2005 (with respect to the Vyvx Business), from whom the Company or any Retained Subsidiary has purchased goods and/or services. As of the date hereof, no such supplier has expressed in writing, and to the Seller's Knowledge no such supplier has expressed verbally, to the Company or any Retained Subsidiary its intention to cancel or otherwise terminate or materially reduce or modify its relationship with the Company or any Retained Subsidiary.

(b) Schedule 5.22(b) sets forth a list of the top 25 customers of the Telecommunications Business and the top 20 customers of the Vyvx Business by revenue derived by the Company and the Retained Subsidiaries (taken together) during the seven-month period ended July 31, 2005 (with respect to the Telecommunications Business) and the eight-month period ended August 31, 2005 (with respect to the Vyvx Business), to whom the Company or any Retained Subsidiary has sold goods and/or services. As of the date hereof, other than SBC prior to June 15, 2005, no such customer has expressed in writing, and to the Seller's Knowledge no such customer has expressed verbally, to the Company or any Retained Subsidiary its intention to cancel or otherwise terminate or materially reduce or modify its relationship with the Company or any Retained Subsidiary.

SECTION 5.23. Labor Matters.

(a) Except as set forth in Schedule 5.23(a): (i) neither of the Company or the Retained Subsidiaries is a party to any outstanding employment agreements or contracts with

officers, managers or employees of either of the Company or the Retained Subsidiaries that are not terminable at will, or that provide for the payment of any bonus or commission; (ii) neither of the Company or the Retained Subsidiaries is a party to any agreement, policy or practice that requires it to pay termination, change of control or severance pay to salaried, non-exempt or hourly employees of such Company (other than as required by law); (iii) neither of the Company or the Retained Subsidiaries is a party to any collective bargaining agreement or other labor union contract applicable to its employees nor does the Seller know of any activities or proceedings of any labor union within the preceding three years to organize any such employees; and (iv) neither of the Company or the Retained Subsidiaries is a party to any consulting agreements with any individual providing services to the Company or any of the Retained Subsidiaries.

(b) Except as set forth in Schedule 5.23(b): (i) each of the Company and the Retained Subsidiaries is in compliance in all material respects with all applicable laws relating to employment and employment practices, the classification of employees, wages, hours, collective bargaining, unlawful discrimination, civil rights, safety and health, workers' compensation, the collection and payment of withholding and/or social security Taxes and terms and conditions of employment; (ii) there are no charges with respect to or relating to either of the Company or the Retained Subsidiaries pending or, to the Seller's Knowledge, threatened before the Equal Employment Opportunity Commission or any state, local or foreign agency responsible for the prevention of unlawful employment practices; and (iii) neither of the Company or the Retained Subsidiaries has received any notice from any national, state, local or foreign agency responsible for the enforcement of labor or employment laws of an intention to conduct an investigation of either of the Company or the Retained Subsidiaries and no such investigation is in progress.

(c) The maximum aggregate severance obligations of the Company and the Retained Subsidiaries under all programs, policies, arrangements (including under the Severance Plan) or otherwise, assuming the requisite conditions for the payment of severance were triggered and the Closing and all payments occur on January 1, 2006, would not be more than the amount set forth on Schedule 5.23(c)(i) based upon the assumptions set forth on Schedule 5.23(c)(i). Assuming the Closing and all payments occur on January 1, 2006, the maximum aggregate obligations payable under the following plans would not exceed the amount set forth on Schedule 5.23(c)(ii) based upon the assumptions set forth on Schedule 5.23(c)(ii): (i) the WilTel Communications, LLC Employee Retention Plan, as adopted effective April 11, 2004; and (ii) the Miscellaneous Retention Plans. There are no non-current liabilities of the Company or the Retained Subsidiaries in respect of the Former Executive Retention Agreements.

SECTION 5.24. Environmental Matters. Except as disclosed on Schedule 5.24 and except for conditions that would not reasonably be expected to result in the Company and its Subsidiaries incurring material liability under Environmental Laws:

(a) each of the Company and the Retained Subsidiaries is, and to the Knowledge of the Seller has been, in compliance in all material respects with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying in material respects with all material licenses, permits and other authorizations required under all Environmental Laws;

(b) to the Seller's Knowledge, each of the Company and the Retained Subsidiaries has not received any notice of violation or potential liability under any Environmental Laws from any Person or any governmental agency inquiry, request for information, or demand letter under any Environmental Law relating to operations or properties, whether currently or formerly owned or operated, of the Company or the Retained Subsidiaries or their predecessors as of the Closing Date, which is outstanding and would reasonably be expected to result in the Company or any Retained Subsidiary incurring material liability under Environmental Laws;

(c) each of the Company and the Retained Subsidiaries is not subject to any outstanding orders arising under Environmental Laws nor are there any administrative, civil or criminal actions, suits or proceedings pending or, to the Seller's Knowledge, threatened, against the Company or the Retained Subsidiaries, or to Seller's Knowledge, their predecessors under any Environmental Law;

(d) to the Seller's Knowledge, there has been no release of Hazardous Materials by the Company or any Retained Subsidiary at, on or under any of the Company Real Property or other properties currently or formerly owned or leased by the Company or the Retained Subsidiaries or their predecessors, which would reasonably be expected to result in the Company or any Retained Subsidiary or their predecessors incurring any material liability or damages under Environmental Laws;

(e) the Seller has made available to the Buyer copies of all material environmental studies, investigations, reports or assessments prepared by or for the Seller, or in the Seller's possession, concerning the Company, its Retained Subsidiaries, the Company Real Property and any real property previously owned, operated or used for disposal by the Company or the Retained Subsidiaries or their predecessors, which are in the possession, custody or control of the Seller.

(f) This Section 5.24 shall constitute the sole and exclusive representations and warranties regarding environmental matters, Environmental Laws or Hazardous Materials.

SECTION 5.25. No Brokers. No broker, finder or similar intermediary has acted for or on behalf of, or is entitled to any broker's, finder's or similar fee or other commission from either of Leucadia, the Seller, the Company or its Subsidiaries in connection with this Agreement or the transactions contemplated hereby.

SECTION 5.26. Acquisition of the Shares. (a) The Seller is acquiring the Shares to be issued by Level 3 hereunder for its own account for investment and not with a view towards the resale, transfer or distribution thereof, nor with any present intention of distributing such shares in violation of applicable federal securities laws.

(b) The Seller has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the Company as contemplated by this Agreement, and is able to bear the economic risk of such investment for an indefinite period of time. The Seller has been afforded access to Level 3's Annual Report on Form 10-K for the fiscal year ended December 31, 2004 and the Level 3's Quarterly Report on

Form 10-Q for fiscal quarters ended March 31, 2005 and June 30, 2005 ("Level 3 SEC Reports") and has been afforded an opportunity to ask questions of and receive answers from representatives of Level 3 and the Buyer concerning the terms and conditions of this Agreement and the acquisition of such Shares.

(c) The Seller is an "accredited investor" as such term is defined in Rule 501(a) promulgated under the Securities Act.

(d) The Seller understands that the Shares have not been registered under the Securities Act or any state securities law, by reason of their issuance in a transaction exempt from the registration requirements of the Securities Act and such state securities laws, which exemption depends upon, among other things, the bona fide nature of the Seller's investment intent as expressed herein. The Seller understands that such securities must be held indefinitely unless they are subsequently registered under the Securities Act and such state securities laws or a subsequent disposition thereof is exempt from registration. The Seller understands that the exemption from registration afforded by Rule 144 (the provisions of which are known to the Seller) promulgated under the Securities Act depends upon the satisfaction of various conditions and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts.

SECTION 5.27. SBC.

(a) Except as set forth in Schedule 5.27(a), as of the date hereof, no credits, refunds or payments of any kind are due or owing to SBC. The Company and its Subsidiaries have billed SBC pursuant to the SBC Agreement in a manner that is consistent, accurate and in accordance with the terms of such agreement in all material respects.

(b) Schedule 5.27(b) sets forth the amounts billed to SBC and its Affiliates for Included Services pursuant to, and as that term is defined in, the SBC Agreement as of October 15, 2005 and for each of the calendar months of July, August and September 2005.

(c) SBC has never made an indemnification claim or other claim for Losses against the Company or any of its Affiliates. Except as set forth in Schedule 5.27(c), to the Seller's Knowledge, there are no material disputes pending with or overtly threatened by SBC.

(d) The Company and its Affiliates have not requested, and SBC and its Affiliates have not paid for, any reimbursements contemplated by Section 3.3(B) of the SBC Agreement.

SECTION 5.28. No Other Representations or Warranties. Except for the representations and warranties contained in this Section 5, neither the Seller nor Leucadia nor any other Person makes any other express or implied representation or warranty on behalf of the Seller or Leucadia with respect to the Company and the Retained Subsidiaries.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF THE BUYER AND LEVEL 3.

The Buyer and Level 3 hereby jointly and severally represent and warrant to Leucadia and the Seller as follows:

SECTION 6.1. Corporate Organization. The Buyer is a limited liability company and Level 3 is a corporation, each of which has been duly organized, validly existing and is in good standing under the laws of the State of Delaware, and has all requisite limited liability company or corporate power (as the case may be) and authority to own its properties and assets and to conduct its businesses as now conducted.

SECTION 6.2. Qualification to Do Business. The Buyer and Level 3 are duly qualified to do business as a foreign limited liability company or corporation (as the case may be) and is in good standing in every jurisdiction in which the character of the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary except where the failure to be so qualified or in good standing that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on the Buyer or Level 3.

SECTION 6.3. No Conflict or Violation. The execution, delivery and performance by the Buyer and Level 3 of this Agreement and by Level 3 of the Registration Rights Agreement do not and will not (i) violate or conflict with any provision of any Organizational Documents of the Buyer and Level 3, (ii) violate any provision of law, or any order, judgment or decree of any Governmental Entity or (iii) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contract, agreement or instrument to which the Buyer or Level 3 is a party or by which it is bound or to which any of its properties or assets is subject that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on the Buyer or Level 3.

SECTION 6.4. Consents and Approvals. Except as set forth in Schedule 6.4, no consent, waiver, authorization or approval of any Governmental Entity, and no declaration or notice to or filing or registration with any Governmental Entity, is required in connection with the execution and delivery by Level 3 and the Buyer of this Agreement and the execution and delivery by Level 3 of the Registration Rights Agreement or the performance by Level 3 and the Buyer of their obligations hereunder or thereunder, except for (i) the filing of Notification and Report Form under the HSR Act, (ii) filings with the Commission and the NASDAQ Stock Market, including without limitation, the filing of the registration statement covering the resale of the Shares to be issued hereunder (the "Registration Statement") and a Notification Form for Listing Additional Shares with respect to the Shares to be issued hereunder, respectively, and (iii) such other consents, waivers, authorizations, approvals, declarations, notices, filings or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to impair in any material respect the ability of Level 3 or the Buyer to perform its obligations hereunder, or prevent or materially impede, interfere with, hinder or delay the consummation of the transactions contemplated hereby.

SECTION 6.5. Authorization and Validity of Agreement. The Buyer and Level 3 have all requisite limited liability company or corporate power (as the case may be) and authority to enter into this Agreement and the Registration Rights Agreement to which they are a party and to carry out their respective obligations hereunder and thereunder. The execution and delivery of this Agreement and the Registration Rights Agreement and the performance of the Buyer's and Level 3's respective obligations hereunder and thereunder have been duly authorized by all necessary limited liability company or corporate action (as the case may be) of the Buyer and

Level 3, and no other limited liability company or corporate proceedings (as the case may be) on the part of the Buyer and Level 3 are necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by the Buyer and Level 3 and, assuming due execution and delivery by Leucadia and the Seller, shall constitute their valid and binding obligation, enforceable against them in accordance with its terms, subject to (i) the effect of bankruptcy, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of creditors' rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law) and (iii) an implied covenant of good faith and fair dealing.

SECTION 6.6. Capitalization and Related Matters.

(a) As of the date hereof, Level 3's capital stock consists of (a) 1.5 billion authorized shares of Level 3 Common Stock and (b) 10,000,000 authorized shares of preferred stock, par value \$0.01 per share, of which no shares of preferred stock are outstanding. As of October 27, 2005, there were 701,076,214 shares of Level 3 Common Stock outstanding. Except as set forth on Schedule 6.6 hereto as of June 30, 2005, (i) neither Level 3 nor any of its Subsidiaries has outstanding any stock or other securities convertible into or exchangeable for any shares of capital stock of Level 3, any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any other character relating to the issuance of, any capital stock of Level 3, or any stock or securities convertible into or exchangeable for any capital stock of Level 3 other than those issued under employee benefit plans of Level 3; and (ii) neither Level 3 nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of capital stock of Level 3. All of the outstanding shares of Level 3 Common Stock have been duly and validly issued and are fully paid and non-assessable. As of the Closing, the Shares will be duly authorized and, upon issuance, sale and delivery as contemplated by this Agreement, the Shares will be validly issued, fully paid and non-assessable securities of Level 3.

(b) All of the outstanding membership units of the Buyer are owned of record and beneficially by Level 3, directly or indirectly.

SECTION 6.7. SEC Filings.

(a) The Buyer has delivered or made available to Leucadia and the Seller a correct and complete copy of the Level 3 SEC Reports. The Level 3 SEC Reports have been timely filed pursuant to the Exchange Act.

(b) The Level 3 SEC Reports complied as to form in all material respects with the requirements of the Exchange Act in effect on the date of filing. The Level 3 SEC Reports, when filed pursuant to the Exchange Act, did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) Each of Level 3's financial statements (including the related notes) included in the Level 3 SEC Reports present fairly in all material respects the consolidated

financial position and consolidated results of operations and cash flows of Level 3 and its Subsidiaries as of the respective dates or for the respective periods set forth therein, all in conformity with GAAP consistently applied during the period involved except as otherwise noted therein, and subject, in the case of any unaudited interim financial statements included therein, to normal year-end adjustments and to the absence of complete footnotes.

SECTION 6.8. No Material Adverse Effect. Since June 30, 2005, there has not been any Material Adverse Effect on Level 3 and its Subsidiaries.

SECTION 6.9. Private Placement. The issuance of the Shares to Leucadia pursuant to this Agreement will not require registration under the Securities Act, assuming that (i) the representations and warranties of the Seller made to Level 3 and the Buyer in connection with this Agreement and the transactions contemplated by this Agreement are true, complete and accurate (upon which assumption Level 3 and the Buyer have relied without independent investigation); and (ii) the Seller complies with its representations and warranties set forth in Section 5.26 of this Agreement.

SECTION 6.10. No Brokers. No broker, finder or similar intermediary has acted for or on behalf of, or is entitled to any broker's, finder's or similar fee or other commission from the Buyer in connection with this Agreement or the transactions contemplated hereby, other than JP Morgan Securities Inc. and Evercore Partners.

SECTION 6.11. Sufficiency of Funds. The Buyer has, and at the Closing will have, sufficient funds available to pay the Cash Purchase Price and the Additional Cash Amount at the Closing.

SECTION 6.12. No Other Representations or Warranties. Except for the representations and warranties contained in this Section 6, neither the Buyer nor Level 3 nor any other Person makes any other express or implied representation or warranty on behalf of the Buyer nor Level 3.

SECTION 7. COVENANTS OF LEUCADIA AND THE SELLER.

Leucadia and the Seller hereby jointly and severally covenant as follows:

SECTION 7.1. Conduct of Business Before the Closing Date. (a) Without the prior written consent of the Buyer, between the date hereof and the Closing Date, Leucadia and the Seller shall not permit either the Company or its Retained Subsidiaries to, except (W) as contemplated by this Agreement, (X) as set forth in Schedule 7.1(a), (Y) as it relates exclusively to the Excluded Assets or the Excluded Liabilities or (Z) in connection with the Pre-Closing Transfers:

- (i) make any material change in the conduct of its businesses or enter into any transaction, other than in the ordinary course of business consistent with past practices;
- (ii) make any change in any Organizational Document; issue any additional shares of capital stock, membership units or partnership interests or other

equity securities or grant any option, warrant or right to acquire any capital stock, membership units or partnership interests or other equity securities or issue any security convertible into or exchangeable for such securities or alter in any way any its outstanding securities or make any change in outstanding shares of capital stock, membership units or partnership interests or other ownership interests or its capitalization, whether by reason of a reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, stock dividend or otherwise. Leucadia and the Seller shall advise Level 3 of the aggregate amount of cash, cash equivalents and marketable securities transferred or to be transferred to Leucadia or an Affiliate (other than the Company and its Retained Subsidiaries) pursuant to this Agreement;

(iii) make any sale, assignment, transfer, abandonment, sublease, assignment or other conveyance of its assets, Company Real Property or rights or any part thereof, other than pursuant to IRUs that are entered into in the ordinary course of business and on customary terms and which IRUs result in payments to the Company and its Subsidiaries of an aggregate amount not to exceed the greater of (i) \$65,000 per day for each day between the date hereof and the Closing Date and (ii) \$4.0 million;

(iv) subject any of its assets, properties or rights or any part thereof, to any Lien or suffer such to exist other than such Liens as may arise in the ordinary course of business consistent with past practice by operation of law, Permitted Liens and Liens pursuant to the Company's Credit Documents or the Company's Real Estate Debt Documents;

(v) redeem, retire, purchase or otherwise acquire, directly or indirectly, any shares of the capital stock, membership units or partnership interests or other ownership interests of the Company and its Subsidiaries or declare, set aside or pay any dividends or other distribution in respect of such shares or interests (other than to issue a dividend to the Seller of Excluded Assets and to satisfy intercompany indebtedness balances);

(vi) acquire, lease or sublease any material assets, raw materials or properties (including any real property), or enter into any other transaction, other than in the ordinary course of business consistent with past practice;

(vii) enter into any new (or amend any existing) employee benefit plan, program or arrangement or any new (or amend any existing) employment, severance, retention, change of control or consulting agreement, grant any general increase in the compensation of officers or employees (including any such increase pursuant to any bonus, pension, profit-sharing or other plan or commitment) or grant any increase in the compensation payable or to become payable to any employee, except in accordance with pre-existing contractual provisions or consistent with past practice;

(viii) make or commit to make capital expenditures that are not otherwise in the ordinary course of business, and (x) that require aggregate payments in excess of \$500,000 per week for each week between the Measurement Date and the

Closing Date or (y) that require aggregate payments after the Closing in excess of \$2,000,000;

(ix) pay, lend or advance any amount to, or sell, transfer or lease any properties or assets to, or enter into any agreement or arrangement with, any of its Affiliates other than among the Company and the Retained Subsidiaries;

(x) fail to keep in full force and effect insurance comparable in amount and scope to coverage maintained at the date hereof;

(xi) make any change in any method of accounting or accounting principle or method except for any such change required by reason of a concurrent change in GAAP, or write off as uncollectible any accounts receivable except in the ordinary course of business consistent with past practice;

(xii) make or change any material Tax election, change an annual accounting period or adopt or change any material accounting method, file any amended Tax Return, enter into any closing agreement, settle any material Tax claim or assessment relating to the Company or any of its Subsidiaries, surrender any material right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Company or any of its Subsidiaries, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax;

(xiii) (A) modify, amend in any material respect or terminate any contract in any manner that would reasonably be expected to have an adverse effect on the Company and the Retained Subsidiaries or (B) make or enter into supplier contracts (including any purchases under tariffs) having a term of more than 12 months that (x) would have payment obligations over the course of such contracts in excess of \$1.0 million in the aggregate or (y) are not otherwise in the ordinary course of business consistent with past practice;

(xiv) settle, release or forgive any material litigation; or

(xv) commit to do any of the foregoing.

(b) From and after the date hereof and until the Closing Date, Leucadia and the Seller shall cause each of the Company and its Subsidiaries to:

(i) continue to maintain, in all material respects, its assets, properties, rights and operations in accordance with present practice in a condition suitable for their current use;

(ii) file, when due or required, all Tax Returns and other reports required to be filed and pay when due all Taxes lawfully levied or assessed against it, unless the validity thereof is contested in good faith and by appropriate proceedings diligently conducted;

(iii) continue to conduct its business in the ordinary course consistent with past practice;

(iv) keep its books of account, files and records in the ordinary course and in accordance with existing practice;

(v) use commercially reasonable efforts in light of the transactions contemplated herein consistent with the operation of the Company's business in the ordinary course and consistent with past practice to preserve intact its operations, organization and reputation;

(vi) pay or accrue by the Measurement Date for the capital expenditure projects listed on Schedule 7.1(b)(vi) hereto and make commercially reasonable efforts to complete such projects; and

(vii) use commercially reasonable efforts to continue to spend the amounts under the Vendor Contracts at rates consistent with past practice and in a manner that is reasonably likely to avoid assessments against the Company or its Retained Subsidiaries during the 12 months after the Closing.

(c) Nothing contained in this Agreement shall give to Level 3 or Buyer, directly or indirectly, rights to control or direct the operations of the Company or the Retained Subsidiaries prior to the Closing Date. Prior to the Closing Date, the Company and the Retained Subsidiaries shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision of its and its Subsidiaries' operations.

SECTION 7.2. Consents and Approvals. Leucadia and the Seller shall, and shall cause each of the Company and its Subsidiaries to (a) use their commercially reasonable efforts to obtain all consents, waivers, authorizations and approvals of all Governmental Entities, and of all other Persons, required in connection with the execution, delivery and performance by the Seller and Leucadia of this Agreement, and the Buyer and Level 3 shall cooperate with the Seller and Leucadia in obtaining such consents and (b) cooperate with the Buyer and Level 3 in preparing and filing all documents required to be submitted by the Buyer or Level 3 to any Governmental Entity, in connection with such transactions and in obtaining any governmental consents, waivers, authorizations or approvals which may be required to be obtained by the Buyer or Level 3 in connection with such transactions (which assistance and cooperation shall include, without limitation, timely furnishing to the Buyer and Level 3 all information concerning Leucadia, the Seller and the Company and its Subsidiaries that counsel to the Buyer determines is required to be included in such documents).

SECTION 7.3. Access to Properties and Records. Leucadia and the Seller shall cause each of the Company and the Retained Subsidiaries to afford to the Buyer and Level 3, and to the accountants, counsel and representatives of the Buyer and Level 3, reasonable access during normal business hours throughout the period prior to the Closing Date (or the earlier termination of this Agreement pursuant to Section 12) to all properties, books, contracts, commitments and files and records (but limited with respect to Tax Returns and correspondence with accountants to these portions of Tax Returns and correspondence with accountants that

relate to the Company and its Retained Subsidiaries and to the extent reasonably necessary to evaluate the purchase of the Membership Units) of the Company and its Subsidiaries and, during such period, shall furnish promptly to the Buyer and Level 3 all other information concerning the Company and the Retained Subsidiaries, properties and personnel as the Buyer and Level 3 may reasonably request to evaluate the transactions contemplated hereby; provided that neither Leucadia nor the Seller shall be required to provide access to any such properties, personnel or information to the extent relating exclusively to the Excluded Assets or Excluded Liabilities. Leucadia and the Seller also shall cause each of the Company and the Retained Subsidiaries to afford to the Buyer and Level 3 reasonable access to its assets and operations throughout the period prior to the Closing Date to evaluate the transactions contemplated hereby. Unless otherwise agreed to by Leucadia and the Seller, all information provided to Buyer and Level 3 and their advisors and representatives shall be kept confidential in accordance with the terms of the Confidentiality Agreement; provided, however, that such obligation will terminate upon the Closing with respect to information relating to the Company and the Retained Subsidiaries (except, if the Buyer has not exercised the Benefit Plan Substitution Right pursuant to Section 2.2(b), in connection with Level 3's and the Buyer's investigation of the Transferred Benefit Plans in accordance with Section 7.16). No investigation or receipt of information pursuant to this Section 7.3 shall qualify any representation or warranty of Leucadia or the Seller or the conditions to the obligations of the Buyer or Level 3.

SECTION 7.4. Pre-Closing Transfers. On or prior to the Closing, Leucadia and the Seller shall cause the Company and the Retained Subsidiaries to transfer to one or more entities directly or indirectly wholly owned by Leucadia (other than the Company or the Retained Subsidiaries) (the "Transferee") all of the right, title and interest of the Company and the Retained Subsidiaries in and to the Excluded Assets. Such transfer shall be on an "as is, where is" basis, and the Company and the Retained Subsidiaries will make no representations or warranties, either express or implied, to the Transferee with respect to the Excluded Assets and the Transferee will have no recourse against the Company and the Retained Subsidiaries with respect to the Excluded Assets or the Excluded Liabilities. In addition, Leucadia and the Seller shall cause the Transferee to assume and to pay, perform, settle and discharge when due all obligations with respect to the Excluded Liabilities. Furthermore, to the extent that any of the Excluded Assets or the Excluded Liabilities require the Company and the Retained Subsidiaries to perform obligations thereunder (including any guarantees), Leucadia and the Seller shall, prior to the Closing, obtain from the other parties thereto the written unconditional release of the Company and the Retained Subsidiaries from all obligations (including any guarantees) and liabilities under such contracts and provide any required notices to any Person or shall otherwise indemnify the Buyer and Level 3 with respect thereto without limitation pursuant to the provisions of Section 9.3(b)(ii) and (iii) hereof. In connection with obtaining the release of the Company and the Retained Subsidiaries from the Company's Credit Documents, the Company may borrow funds from Leucadia or an Affiliate of Leucadia and, subject to Section 7.15(a), such inter-company loans will be repaid by the Company at or prior to the Closing. For purposes of this Agreement, such transfer of the Excluded Assets and assumption of the Excluded Liabilities and release or indemnification of the Company's and the Retained Subsidiaries' obligations thereunder (including any guarantees) are collectively referred to as the "Pre-Closing Transfers." Notwithstanding the foregoing, prior to transferring the capital stock, membership units or other ownership interests of the Transferred Subsidiaries to the Transferee, Leucadia and the Seller shall cause the Company and the Retained Subsidiaries to transfer to the Company or a

Retained Subsidiary all of the right, title and interests of the Transferred Subsidiaries in and to any of the assets and rights primarily used in the Businesses. Leucadia and the Seller shall assume full liability for any and all Taxes that result from the Pre-Closing Transfers to the extent in excess of any Tax (except liability for any Income Tax) reflected in the determination of the Actual Adjusted Net Working Capital.

SECTION 7.5. Registration Statement and Level 3 Commission Filing Requirements. Leucadia and the Seller shall and shall use their commercially reasonable efforts to cause the Company and its Subsidiaries to (i) prepare and timely deliver to the Buyer, such that the Buyer can meet any Commission filing deadlines with respect to the transactions contemplated by this Agreement, audited GAAP financial statements of the Company and its consolidated Subsidiaries for the year ended December 31, 2004 and, upon the completion thereof, the year ended December 31, 2005, as well as unaudited quarterly financials of the Company and its consolidated subsidiaries for the nine months ended September 30, 2005 and the financial statements for 2006 quarterly periods ending prior to the Closing, for inclusion in the Registration Statement or to meet Level 3's Commission filing requirements with respect to the transactions contemplated by this Agreement, (ii) cause Leucadia's independent public accountants to perform the procedures specified by the American Institute of Certified Public Accountants for a review of financial information as described in SAS 100, Interim Financial Information with respect to the unaudited financial statements of the Company and its consolidated Subsidiaries for the nine months ended September 30, 2005 and the financial statements for 2006 quarterly periods ending prior to the Closing and (iii) to the extent required by the Company's independent public accountants, cooperate with Level 3 and the Company to obtain the consent of the Company's independent public accountants, when required, with respect to the 2004 and 2005 audited financial statements so that such audited financial statements can, if required, be included in the Registration Statement or other Commission reports required to be filed with or furnished to the Commission by Level 3 with respect to the transactions contemplated by this Agreement. Level 3 and the Buyer acknowledge that if the Closing has occurred, timely delivery of certain items required under this Section 7.5 will require the cooperation and efforts of Level 3 and the Buyer to the same extent as Leucadia and the Seller.

SECTION 7.6. Negotiations. From and after the date hereof and until the earlier to occur of the Closing Date or the termination of this Agreement pursuant to Section 12 hereof, Leucadia and the Seller shall not, and shall cause any Persons acting on behalf of Leucadia, the Seller, the Company and its Subsidiaries not to encourage, solicit, engage in discussions or negotiations with, or provide any information to, any Person or group (other than the Buyer or its representatives) concerning any merger, sale of substantial assets, sale of shares of capital stock, membership units or partnership interests or similar transaction involving the Company and the Retained Subsidiaries (other than with respect to the Excluded Assets and Excluded Liabilities).

SECTION 7.7. Certain Real Estate Matters. Prior to the Closing, Leucadia and the Seller shall cause the Company and its Subsidiaries to (i) renew the Leases set forth on Schedule 7.7(a), (ii) allow the Leases set forth on Schedule 7.7(b) to expire in accordance with their terms and (iii) terminate the intercompany leases set forth on Schedule 7.7(c), in the case of clauses (ii) and (iii), with no liability or obligation on the part of the Company, the Retained Subsidiaries, the Buyer or Level 3, except as therein provided.

SECTION 7.8. Commercially Reasonable Efforts. Upon the terms and subject to the conditions of this Agreement, Leucadia and the Seller will use and shall cause each of the Company and its Subsidiaries to use, their commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable law to consummate and make effective in the most expeditious manner practicable the transactions contemplated hereby. Upon the terms and subject to the conditions of this Agreement, Leucadia and the Seller shall execute the Registration Rights Agreement on the Closing Date and Leucadia and the Seller shall cause the Company and WilTel Technology Center, LLC to execute the Lease Agreement on the Closing Date.

SECTION 7.9. Notice of Breach. Through the Closing Date, Leucadia and the Seller shall (a) promptly give written notice with particularity upon having knowledge of any matter that constitutes or is reasonably likely to constitute a breach of any representation, warranty, agreement or covenant of Leucadia or the Seller contained in this Agreement and (b) promptly notify Level 3 upon having knowledge of the announced intention of any of the suppliers or customers listed on Schedule 5.22(a) and Schedule 5.22(b), respectively, to cancel, terminate or materially reduce its relationship with the Company or any Retained Subsidiary as such relationship exists on the date hereof. No notification pursuant to this Section 7.9 shall qualify any representation or warranty of Leucadia or the Seller or the conditions to the obligations of the Buyer or Level 3.

SECTION 7.10. Stock Certificate Legend. The certificates evidencing the Shares will bear substantially the following legend reflecting the foregoing restrictions on the transfer of such Shares:

“The securities evidenced hereby have not been registered under the Securities Act, and may not be transferred except pursuant to an effective registration under the Act or in a transaction which, in the opinion of counsel reasonably satisfactory to Level 3 Communications, Inc. qualifies as an exempt transaction under the Act and the rules and regulations promulgated thereunder. Such securities are also subject to the agreements, covenants and restrictions in regard to the transfer of such securities as provided in that certain Registration Rights and Transfer Restriction Agreement, dated as of [the Closing Date], among Level 3 Communications, Inc., Leucadia National Corporation and Baldwin Enterprises, Inc., a copy of which Registration Rights and Transfer Restriction Agreement is on file at the office of the Secretary of Level 3 Communications, Inc.”

SECTION 7.11. Non-Solicitation.

(a) During the period commencing on the date of this Agreement and ending on the 12-month anniversary of the Closing Date (the “Initial Restricted Period”), each of the Seller and Leucadia shall not and shall cause their Affiliates not to, directly or indirectly, without the prior written consent of the Buyer, induce or solicit for employment or engagement as a

consultant, or hire or engage as a consultant, any Covered Employee of the Company and the Retained Subsidiaries, provided, that neither (i) generalized searches through media advertisement, employment firms or otherwise that are not directed to such personnel nor (ii) soliciting or hiring such individuals following their termination of employment or notification of termination by the Company or the Retained Subsidiaries shall constitute a violation of the foregoing; provided, such hiring occurs after the actual date of termination.

(b) During the period commencing on the day after the 12-month anniversary of this Agreement and ending on the 18-month anniversary of the Closing Date (the "Subsequent Restricted Period"), each of the Seller and Leucadia shall not and shall cause their Affiliates not to, directly or indirectly, without the prior written consent of the Buyer, induce or solicit for employment or engagement as a consultant, any Covered Employee of the Company and the Retained Subsidiaries, provided, that neither (i) generalized searches through media advertisement, employment firms or otherwise that are not directed to such personnel nor (ii) soliciting such individuals following their termination of employment or notification of termination by the Company or the Retained Subsidiaries shall constitute a violation of the foregoing.

(c) The parties agree that a monetary remedy for a breach of the agreements set forth in Sections 7.11(a) and (b) hereof will be inadequate and impracticable and further agree that such a breach would cause Level 3 and the Buyer irreparable harm, and that Level 3 and the Buyer shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages. In the event of such a breach, Leucadia and the Seller agree that Level 3 and the Buyer shall be entitled to such injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions as a court of competent jurisdiction shall determine.

(d) If any provision of this Section 7.11 is invalid in part, it shall be curtailed, as to time, location or scope, to the minimum extent required for its validity under the laws of the United States and shall be binding and enforceable with respect to the Seller and Leucadia as so curtailed.

SECTION 7.12. Employees and Employee Benefits.

(a) Certain current and former employees of the Company and its Subsidiaries (including certain predecessor companies) participate in a qualified defined benefit pension plan known as the WilTel Communications, LLC Pension Plan (the "Retirement Plan"). Prior to the Closing Date, Leucadia and the Seller shall take all necessary and appropriate action to: (i) cause the Company and its Subsidiaries to amend or revise the Retirement Plan so that no further benefits will be accrued by their employees under such plan on or after the Closing Date, (ii) assume the sponsorship of the Retirement Plan and the related obligations and liabilities thereunder accrued in respect of the eligible employees prior to the Closing Date, and (iii) cause the Company and its Subsidiaries to cease to sponsor and maintain the Retirement Plan as of the date such sponsorship is assumed by Leucadia and the Seller; provided, however, that the covenants of the Seller set forth in clauses (i) through (iii) of this Section 7.12(a) shall be of no further force and effect upon the exercise by the Buyer of its Benefit Plan Substitution Right in accordance with Section 2.2(b). The Company and its Subsidiaries shall have no obligation to

implement a qualified defined benefit pension plan for their employees on or after the Closing Date.

(b) Certain current and former employees of the Company and its Subsidiaries participate in a nonqualified deferred compensation plan known as the WilTel Communications, LLC Supplemental Executive Retirement Plan (the "Deferred Compensation Plan"). Prior to the Closing Date, Leucadia and the Seller shall take all necessary and appropriate action to: (i) cause the Company and its Subsidiaries to amend or revise the Deferred Compensation Plan so that no further benefits will be accrued by their employees under such plan on or after the Closing Date, (ii) assume the sponsorship of the Deferred Compensation Plan and the related obligations and liabilities thereunder accrued in respect of the eligible employees prior to the Closing Date, and (iii) cause the Company and its Subsidiaries to cease to sponsor and maintain the Deferred Compensation Plan as of the date such sponsorship is assumed by Leucadia and the Seller; provided, however, that the covenants of the Seller set forth in clauses (i) through (iii) of this Section 7.12(b) shall be of no further force and effect upon the exercise by the Buyer of its Benefit Plan Substitution Right in accordance with Section 2.2(b). The Company and its Subsidiaries shall have no obligation to implement a nonqualified deferred compensation plan for their employees on or after the Closing Date.

(c) Within three days after the date hereof, the Seller shall deliver to the Buyer a list dated as of October 28, 2005 containing the name, position, starting employment date, current annual salary, bonus and commissions in 2004 of each current employee of either of the Company or its Retained Subsidiaries.

(d) No provision of this Section 7.12 shall create any third party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof) of the Company or of any of its Subsidiaries in respect of continued employment (or resumed employment) and no provision of this Section 7.12 shall create any such rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee plan or arrangement which may be established or maintained by the Buyer or any of its Affiliates after the Closing Date. No provision of this Agreement shall constitute a limitation on rights to amend, modify or terminate after the Closing Date any such plans or arrangements of the Buyer or any of its Affiliates.

SECTION 7.13. Tax Matters.

(a) All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all recording charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement shall be paid by the Buyer and the parties shall cooperate in the filing of all necessary Tax Returns and other documentation with respect to such Taxes and charges.

(b) (i) The Seller shall prepare and file, or cause to be prepared and filed, when due all Tax Returns that are required to be filed by or with respect to the Company and its Subsidiaries for all Pre-Closing Tax Periods to the extent that such Tax Returns are required to be filed on or prior to the Closing Date, taking into account all valid extensions of time to file such returns. The Seller shall also prepare and file or cause to be prepared and filed when due all